

Board & Commission Members' Orientation Session

Tuesday, October 2, 2007

9:15 – 10:00 a.m.

Open Meetings and Public Records

*(0.75 hour CLE)**

Julie Pottorff

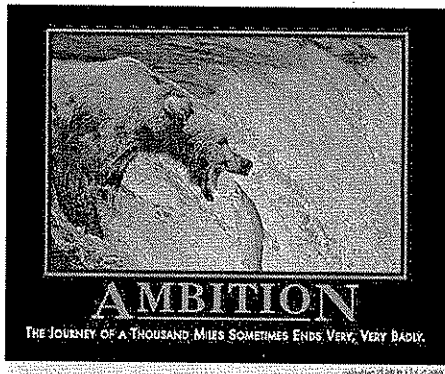
**Deputy Attorney General
Iowa Attorney General's Office**

Hosted by Governor Chet Culver & Lt. Governor Patty Judge

PUBLIC RECORDS and OPEN MEETINGS

**Julie F. Pottorff
Deputy Attorney General
Iowa Department of Justice**

October 2, 2007



What is a “Public Record” ?

- all records, documents, tape, or other information, stored or preserved in any medium
- of or belonging to this state or any county, city, township. . . .
- or any branch, department, board, bureau, commission, council, or committee of any of the foregoing

Public Records May Be in Any Form

- Paper
- Audio or video tape
- Computer tape or computer readable medium

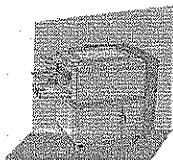


Examples of Public Records Include:

- Agenda materials for an open meeting
- Contracts
- E-mails

Who Has Access to Public Records?

- *Every person has the right to:*
 - Examine, publish or otherwise disseminate
 - Make copies



When Can People Examine and Copy Public Records?

■ *Rights can be exercised any time during the "customary" office hours. If office hours are less than 30 hours per week:*

- ▶ at any time between 9:00a.m. - 12:00 noon and 1:00p.m. - 4:00p.m.
- ▶ Monday through Friday, except legal holidays

■ A person exercising the right to access public records and the lawful custodian may agree on a different time.



Who Should Respond to Requests for Public Records?

- Delegate responsibility to a single contact person.
- Announce your contact person to the public.



How Should Requests for Public Records Be Managed?

- Honor requests in writing, by phone or by e-mail
- Do not relinquish control of original records
- Provide a reasonable number of copies
- Make receipt contingent on payment only if you have provided an estimate in advance

What Should I Charge?

- *Charge only actual expenses:*
 - A reasonable fee for cost of personnel necessary to supervise and copy records
 - A reasonable fee = actual cost
 - A reasonable fee = uniform application

- Do not charge fees to cover the costs of computer system depreciation, maintenance, electricity and insurance.
- Do not include employment benefits in the hourly rate for personnel to supervise or make copies.



Aren't Some Records Confidential?

- Some public records are open for examination and copying -- others are confidential
- A record may only be kept confidential under a specific provision of law
- Provisions of law that make public records confidential are throughout the Iowa Code

Some Records *Must* Be Confidential:

- Pre-sentence investigation reports
- Criminal history data
- Information that a person has acquired immune deficiency syndrome (AIDS)

Some Records *May Be* Confidential:

- The following records shall be kept confidential, unless otherwise ordered . . . by the lawful custodian:
 - Peace officers' investigative reports and specific portions of electronic mail and telephone billing records. . . .
 - Personal information in confidential personnel records of public bodies

What if I'm Not Sure Whether the Record is Confidential?

- *You can take time before responding:*
 - to decide whether to seek an injunction
 - to seek an injunction from the court
 - to decide if the record is public or confidential
 - to decide if the record should be made available

Consult with counsel, if necessary, but decide quickly:

- Usually do not take more than 10 business days.
- Never take more than 20 calendar days *unless the requestor agrees*



What is a "Meeting"?

- Gathering in person or by electronic means;
- Formal or informal;
- Majority of the members of the body; with
- Deliberation or action



Who's Covered by the Law?

- Governmental bodies as defined by statute
- Multimembered bodies formally and directly created by a governmental body
- An advisory board, commission, or task force created by the governor or the general assembly

How Are Meetings Announced?

- *Notice about the meeting should be:*
 - Provided 24 hours in advance or as soon as reasonably possible – if, for good cause, 24 hours is impossible or impractical
 - Posted on a bulletin board or prominate place
 - Sent to media who have requested notice

What Should Be in a Notice?

- Information “reasonably calculated” to apprise the public:

- Time
- Date
- Place
- Tentative agenda

When and Where Can We Meet?

- A place “reasonably accessible” to the public
- A time “reasonably convenient” to the public
- Unless for “good cause” such a place or time is impossible or impracticable



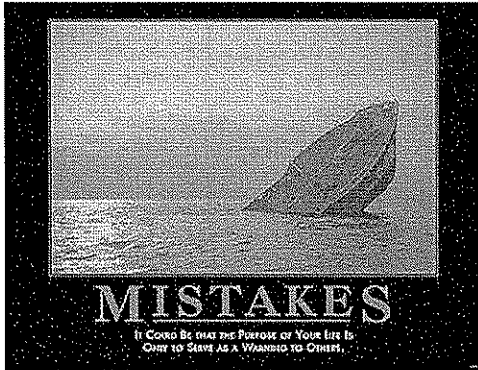
Are Minutes of Meetings Required?

- You must keep minutes that show:

- Date, time & place of the meeting
- Members present
- Action taken
- Result of each vote and sufficient information to indicate the vote of each member present

Can We Meet in Closed Session?

- *Yes, but only as authorized by law:*
 - Fit under a statutory reason to close
 - Take a roll call vote on closing the session
 - Have votes of 2/3 body or all members present
 - Keep minutes and tape record the session
 - Stick to the statutory reason for closing
 - Return to open session for any final action



What Happens if I Violate the Law?

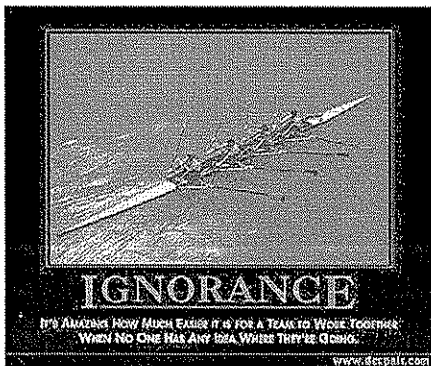
- *Both laws can be enforced by:*
 - Any aggrieved person
 - A taxpayer to the State of Iowa
 - A citizen of the State of Iowa
 - The Attorney General
 - A county attorney

Upon finding a violation a court shall:

- Assess damages between \$100 -\$500
- Order payment of all costs and attorney fees
- Issue an order removing from office any person who has a prior violation for which damages were assessed

In addition, the Court:

- Shall issue an injunction (Public Records)
 - Directing the lawful custodian to comply
- May issue an injunction (Open Meetings)
 - Ordering members to refrain from future violations



What Defenses Are Available?

- *Ignorance of the law is no defense, but damages will not be assessed if you:*
 - Voted against the violation
 - Had good reason to believe and in good faith believed facts which, if true, would have indicated compliance with the law

- Reasonably relied upon a decision of a court or an opinion of the attorney general or the attorney for the governmental body.



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